

NO. PD-1180-16
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

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NO. 14-15-00313-CR
IN THE FOURTEENTH COURT OF APPEALS
IN HOUSTON, TEXAS

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| ALVIN WESLEY PRINE, JR. | § | Appellant |
| v. | § | |
| STATE OF TEXAS | § | State |

Appeal from Liberty County

BRIEF FOR APPELLANT

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Appeal from Liberty County

BRIEF FOR APPELLANT

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW the Appellant, by and through his attorney of record on appeal, and presents this Brief for Appellant.

STATEMENT REGARDING ORAL ARGUMENT

The Court has stated that oral argument will not be permitted in this case.

STATEMENT OF THE CASE

Appellant agrees with the State's Statement of the Case. The only additions that Appellant would make are that the Court of Appeals decision has now been

published, see **Prine v. State**, 494 S.W.3d 909 (Tex.App. 14 Dist. 2016), and on September 1, 2016, the Fourteenth Court of Appeals denied the State's Motion for En Banc Reconsideration.

ISSUES PRESENTED

ISSUE NUMBER ONE

WHEN THE RECORD IS SILENT AS TO DEFENSE COUNSEL'S REASONS FOR CALLING WITNESSES IN SUPPORT OF JURY-ORDERED PROBATION, HAS THE PRESUMPTION OF REASONABLE STRATEGY BEEN REBUTTED?

ISSUE NUMBER TWO

IF THE REASONABLENESS PRESUMPTION WAS REBUTTED, DID DEFENSE COUNSEL RENDER INEFFECTIVE ASSISTANCE IN CALLING WITNESSES WHO PRESENTED FAVORABLE EVIDENCE BUT ALSO OPENED THE DOOR FOR DAMAGING EVIDENCE?

STATEMENT OF FACTS

Appellant will agree with the State that Appellant was convicted for the offense of sexual assault of a nineteen-year old female acquaintance who was passed out drunk in a truck while he was also intoxicated (R.R.4 --34-37, 40-42, 44-46, 89-91, 115, 176-178).

However, the State, at page 3 of its brief, makes the *incorrect* assertion that the prosecutor told Appellant's trial counsel about Appellant impregnating a fifteen-year old babysitter, when he was in his late 20's and married, *before the punishment proceeding began*. This conversation actually occurred *after the State had rested its punishment case* on Friday, March 13, 2015, in which the State offered no evidence of any prior convictions or extraneous offense

evidence, with Appellant starting his punishment evidence on Monday, March 16, 2015, and both parties advised the trial court that their conversation regarding this extraneous offense occurred on Sunday, March 15, 2015 (R.R.5 –79-83, 86-88; R.R.6 –5, 8, 32-34). (Emphasis supplied).

Appellant's trial counsel called Jason Jones, a Liberty County adult probation officer who handles the sex offender caseload, to testify about the conditions of probation for sex offenders and Appellant's eligibility for probation after Jones had a five-minute interview with Appellant (R.R.6 – 9-15, 22-23). This led to the prosecutor cross-examining Mr. Jones about Appellant's suitability for probation based on information the prosecutor had obtained over the previous weekend, which the prosecutor conveyed to Appellant's trial counsel, that Appellant had a grown child who was the result of Appellant's sexual relationship with a 15 year old babysitter (R.R.6 – 23-25, 32-34). Further, without objection by defense counsel, the State was allowed to show that Jones believed Appellant did not deserve probation based solely on the facts of the case for which he was convicted (R.R.6 – 24-25).

Appellant also called Brenda Potter, Appellant's aunt, and Dorothy Prine, Appellant's sister, to testify about Appellant's character and eligibility for probation, which led to the prosecutor cross-examining them about Appellant's relationship with the 15 year old babysitter (R.R.6 – 26-32, 35, 38-50, 52-54).

Additional references to the record will be made as necessary in order to address the issues in this case.

SUMMARY OF THE ARGUMENT

While Appellant will agree that in most situations a trial attorney will not be found to have rendered ineffective assistance on a silent record, when a trial attorney, such as Appellant's trial attorney, decides to call punishment witnesses that the trial attorney knows, or should know, will damage and destroy his client's chances at receiving a lesser sentence, the trial attorney should be found ineffective on a silent record when his decision to call these punishment witnesses is not strategic, and in fact, contradicts any reasonable strategy. The limited benefit, if there was any benefit at all, to calling these witnesses was greatly outweighed, and in fact, obliterated, by the evidence showing that Appellant was a repeat sex offender, one of the worst things that can be proven against a human being, especially when that evidence also shows that Appellant was never punished for his first known sex offense.

ARGUMENT

ISSUE NUMBER ONE (RESTATED)

WHEN THE RECORD IS SILENT AS TO DEFENSE COUNSEL'S REASONS FOR CALLING WITNESSES IN SUPPORT OF JURY-ORDERED PROBATION, HAS THE PRESUMPTION OF REASONABLE STRATEGY BEEN REBUTTED?

ISSUE NUMBER TWO (RESTATED)

IF THE REASONABLENESS PRESUMPTION WAS REBUTTED, DID DEFENSE COUNSEL RENDER INEFFECTIVE ASSISTANCE IN CALLING WITNESSES WHO PRESENTED FAVORABLE EVIDENCE BUT ALSO OPENED THE DOOR FOR DAMAGING EVIDENCE?

ARGUMENT AND AUTHORITIES

Appellant, with leave of the Court, will respond to both issues together. Appellant submits that both issues should be answered in the affirmative in this case, and submits the following argument in support thereof.

Appellant understands that to establish ineffective assistance of counsel, he must show by a preponderance of the evidence that: (1) his counsel's performance was deficient, i.e., it fell below an objective standard of reasonableness, and (2) Appellant was prejudiced because a reasonable probability exists that, but for the deficient performance, the outcome of his trial, specifically the punishment phase of trial, would have been different. **Strickland v. Washington**, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); **Ex parte Cash**, 178 S.W.3d 816, 818 (Tex.Cr.App. 2005). Also, Appellant understands that appellate courts indulge a strong presumption that counsel's acts and omissions were reasonable and part of a sound trial strategy and that it is Appellant's burden to overcome that presumption with a preponderance of the evidence. **Jackson v. State**, 877 S.W.2d 768, 771 (Tex.Cr.App. 1994). However, Appellant is also aware that this Court has held that appellate courts should find ineffective assistance as a matter of law if no reasonable trial strategy could justify trial counsel's conduct, regardless of whether the record adequately reflects trial counsel's subjective reasons for his/her actions. **Andrews v. State**, 159 S.W.3d 98, 102 (Tex.Cr.App. 2005). Appellant is also aware that this Court subsequently held that, absent an opportunity for trial counsel to explain his/her actions,

appellate courts should not find ineffective assistance unless the challenged conduct was “so outrageous that no competent attorney would have engaged in it”. **Goodspeed v. State**, 187 S.W.3d 390, 392 (Tex.Cr.App. 2005). Further, the United States Supreme Court has recognized that there are exceptional cases in which trial counsel’s ineffectiveness is so apparent that it should be raised on direct appeal and possibly even addressed by an appellate court sua sponte. See **Massaro v. United States**, 538 U.S. 500, 508, 123 S.Ct. 1690, 1696, 155 L.Ed.2d 714 (2003).

Appellant submits that trial counsel’s conduct during the punishment phase of trial was so outrageous that no competent attorney would have engaged in it.

In **Robertson v. State**, 187 S.W.3d 475, 484 (Tex.Cr.App. 2006), this Court found ineffective assistance of counsel, holding that it is not sound trial strategy for defense counsel to allow the introduction of inadmissible evidence attacking the defendant’s credibility when the defendant’s credibility is central to the defense strategy. Appellant submits that the same reasoning should apply when trial counsel’s job was to attempt to obtain a lesser punishment, i.e. trial counsel should not call witnesses whom he knows, or should know, will open the door to extremely damaging punishment evidence showing that Appellant has previously committed a very serious crime, and escaped punishment for it, that will greatly outweigh any potential benefit those witnesses could offer.

Regarding the testimony of the probation officer, Jason Jones, who was not subpoenaed, (R.R.6 – 25), any defense counsel should know that the duties of a probation officer include nothing that could be considered beneficial in the way of testimony towards a criminal defendant. By statute, probation officers supervise individuals on probation, they enforce the conditions of probation and they

report violations of probation to the court. See **Texas Government Code, Section 76.004 (b)**. Probation officers work with the court and prosecution on a daily basis, with the vast majority of that interaction involving enforcement of the rules and prosecution of offenders, whereas that same interaction is not present with defense attorneys, and seldom does their testimony benefit an offender. While they are not actually police officers, they have similar duties when it comes to probationers.

This Court, on at least two occasions, has rejected petitions for discretionary review in cases finding ineffective assistance of counsel when the defense attorney called a probation officer to testify at the punishment phase of trial and either opened the door to damaging testimony or failed to object to inadmissible testimony similar to that found in Appellant's case. See **DeLeon v. State**, 322 S.W.3d 375, 384-87 (Tex.App. 14 Dist. 2010, pet. ref'd.); **Mares v. State**, 52 S.W.3d 886, 892-93 (Tex.App. 4 Dist. 2001, pet. ref'd.). Further, this Court, in **Ellison v. State**, 201 S.W.3d 714, 723 (Tex.Cr.App. 2006), held that a probation officer, if shown to have the proper qualifications, may testify as to a defendant's suitability for probation. Trial counsel failed to object to the State's cross-examination that revealed Jones' opinion that Appellant was not a good candidate for probation based on the facts of the case for which he was convicted, (R.R.6 – 24-25), and whether Jones' qualifications were sufficient or not, trial counsel was totally reckless in calling Jones to the stand and rendered ineffective assistance in doing so, especially when you consider that trial counsel improved the State's chances of qualifying Jones as an expert on Appellant's suitability for probation by allowing Jones to interview Appellant before he testified.

The State, at page 8-9 of its brief, cites a portion of the dissenting opinion in the lower court in which Justice Frost posed several questions that trial counsel should be allowed to answer before a finding of ineffective assistance should be made. Regarding those questions, the testimony by Jones reflected that there was a five-minute conversation between Appellant and Jones the morning that Jones testified, and further, it appears that the prosecutor may have even been present because the prosecutor questioned Jones as follows:

Q. (by the prosecutor) "And we came over and saw you this morning; is that correct?"

A. That is correct." (R.R.6 – 16,22).

Appellant submits that Justice Frost's questions are unnecessary and irrelevant for the following reasons. First, a five-minute interview of an adverse witness, as detailed above, is an insufficient amount of time to obtain a reasonable amount of information from that witness and to provide that witness the necessary information for the witness to arrive at an opinion, if that is what you intend to obtain from the witness, therefore, it was an insufficient investigation by trial counsel regarding the possible benefit of calling Jones as a witness. Second, if an attorney is going to allow that witness to give an opinion, which trial counsel did, then that attorney better provide all pertinent information about the case to the witness, because if trial counsel doesn't, then the State will do so, and failing to provide that information in such a situation would be totally ludicrous and not meet the standard of a reasonably competent attorney. Third, if there was a memory problem involved, then trial counsel, or at least competent counsel, should and would have refreshed Jones' memory on re-direct by establishing that there was a prior conversation, if any, and the content

of that conversation to show that Jones had previously given trial counsel different information or a different opinion. Finally, if the prosecutor was present during Appellant's interview with Jones, why? What benefit is there to Appellant having the prosecutor present? And, even if the prosecutor was not present during Appellant's interview, did the attorneys talk to Jones together about the case, and how does that benefit Appellant for his counsel to provide the State the ability to prepare Jones for any cross-examination prior to Jones taking the stand? In short, there is no benefit to Appellant.

Continuing with the questions Justice Frost posed about weighing the damage to Appellant caused by introduction of evidence regarding the prior sexual assault of the babysitter versus possible benefits of the family members' testimony, any reasonably competent attorney should have seen that there was no contest. We're not talking about a prior shoplifting, auto theft or burglary, we're dealing with a prior sex offense involving a child, and it is compounded by the fact that Appellant never suffered any punishment for the crime. When a jury is shown that they have a repeat sex offender in front of them, as opposed to a simple drunken situation in which both Appellant's and the victim's senses were numbed by alcohol and Appellant is not shown to have any prior offenses, the severity of the former set of circumstances dwarfs the latter in terms of likely punishment. Further, Justice Frost's question about Appellant possibly insisting on the testimony is irrelevant as well. Any reasonably competent attorney would have strongly advised Appellant against having the relatives testify, advising him of the fact that the evidence of the prior sex offense would be brought up in their testimony, and if he had failed to convince Appellant, any reasonably competent attorney would have put this matter on the record before calling the relatives to

testify in order to protect himself from an ineffective assistance claim, just as was done to show that Appellant was offered, and rejected, several plea offers before trial (R.R.3 – 162-165).

Turning to page 9 of the State’s brief, the State cites three cases that have no relevance to Appellant’s case. Those cases dealt with situations in which the defense attorney failed to call certain witnesses. Obviously, some additional evidence would need to be heard in a motion for new trial or habeas proceeding because no one would know exactly what those witnesses would say on the stand and the attorney would not have been on the record regarding what, if anything, those individuals had told him before trial. However, in Appellant’s case, it’s clear from the record that trial counsel knew before he called Appellant’s relatives that they would be questioned about the sexual assault of the babysitter and their testimony on the matter is obviously present as well, and if trial counsel didn’t know that they would be subject to cross-examination on this matter, then he was not acting as competent counsel because it is a basic rule that character witnesses may be impeached by extraneous offense evidence. See Wilson v. State, 71 S.W.3d 346, 350 (Tex.Cr.App. 2002); Wheeler v. State, 67 S.W.3d 879, 885 (Tex.Cr.App. 2002).

A case that is more relevant to Appellant’s situation is Ex parte Hill, 863 S.W.2d 488, 489 (Tex.Cr.App. 1993). In that case, this Court found that defense counsel rendered ineffective assistance by calling a co-defendant as an alibi witness when the witness had already pled guilty to the offense, and stated the following:

“While it is well within the attorney’s discretion to put on an alibi defense, counsel must, however, make sure that a co-defendant he proffers as a

corroborating witness does not lose the case for his client by opening the door to the State introducing evidence of the witness's guilty plea.”

To paraphrase, in Appellant’s case, while it was trial counsel’s discretion to put on punishment witnesses, with his knowledge of Appellant’s prior offense, counsel should have avoided calling those witnesses to the stand in order to make sure that those witnesses did not lose the punishment case for Appellant by opening the door to the State introducing evidence of Appellant’s prior sexual assault of the 15 year old babysitter, for which Appellant was not punished.

Briefly, Appellant must respond to the State’s final argument in support of its position on the first issue in this case, at pp. 9-10 of its brief, involving the consequences for trial counsel if the lower court’s opinion is to be upheld. While those consequences normally might be a consideration, in this case they should not, due to the fact that Appellant’s trial counsel, Alvin Saenz, Texas Bar Number 00786215, (R.R.5 –2), passed away on December 5, 2015. See **Texas Bar Journal, September 2016, Memorials**, page 654; see also **State Bar of Texas** website at: https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=150255 .

Next, the State argues that even if the presumption of reasonable strategy has been rebutted, that trial counsel was not deficient in calling Jones, Potter and Dorothy Prine to testify because, basically, he (counsel) had to prove Appellant’s eligibility for probation (See State’s Brief at pp. 10-11). The State misses the point. On that Sunday that the prosecutor advised trial counsel that Appellant had previously sexually assaulted a 15 year old babysitter and not been punished

for that offense, (R.R.6 – 32-34), trial counsel should have realized at that moment that probation was no longer a possibility if the jury heard that evidence.

Trial counsel's only reasonable recourse at this point was to: (1) change his strategy; (2) abandon the attempt at probation because the only witnesses who could show Appellant was eligible for probation would be Appellant or close family members, all of whom would be subject to testifying about the babysitter and the child born as a result of that assault, pursuant to either **Texas Rules of Evidence, Rule 803 (13) and (19)**, or as character witnesses would have been subject to impeachment pursuant to **Texas Rules of Evidence, Rule 607**; (3) not call any of these witnesses, and attempt to avoid any mention of this prior offense by advising Potter and Dorothy Prine to stay away from the courthouse so that the State could not call them as adverse witnesses; and (4) not subject Appellant to an interview by Jones so that Jones could not be qualified as an expert on Appellant's suitability for probation.

Once the prosecutor advised trial counsel that he was going to introduce evidence of the babysitter offense, Appellant submits that trial counsel should have rested his case without calling any witnesses, forcing the prosecutor to request that the trial court allow him to re-open his case, challenging that request and then, if he lost that challenge, challenging the qualifications of any witness that the State called to prove the offense regarding the babysitter. Appellant submits that there are two reasons that it is unlikely that the prosecution would have been able to bring forth this evidence on its own. First, the information the State received appeared to be pure hearsay that would have been inadmissible, based on the conversation regarding the State's notice to trial counsel, as follows:

MR. WARREN (the prosecutor): "Judge, the knowledge of this came to the D.A.'s office Sunday morning. As soon as it came to the D.A.'s office, I called Mr. Saenz and gave him the information. Mr. Saenz from an eyewitness that told me this was given this information on Thursday. I was not given it until Sunday. He had it four more days than I did, Judge.
MR. SAENZ: Judge, if I may respond to that, I'm actually not aware of receiving that information ever. So, I'm not sure where he's getting this information from." (R.R.6 – 32).

From this exchange, the State apparently received the information from an eyewitness to the offense for which Appellant had just been convicted. None of the eyewitnesses to the current crime were family members of Appellant's, none were shown to have even known Appellant when the babysitter offense occurred, and therefore, would, in all likelihood, not have been qualified to testify to Appellant's family history, including the babysitter offense, under **Texas Rules of Evidence, Rule 803 (13) or (19)**, or under any other exception to the hearsay rule.

The second reason, which also bolsters the first, is that if the prosecution actually had a witness to give admissible testimony regarding the sexual assault of the babysitter, why did the prosecution not request to re-open its case before the defense began its testimony? The prosecution had rested its case the Friday before, with the defense starting its case the following Monday, (R.R.5 – 87-88; R.R.6 – 5), it would have made perfect sense to add on to the prosecution case at that point, so why not make the request to re-open the prosecution case before the defense case began if the prosecution really had a witness to testify about the sexual assault of the babysitter? Appellant submits that the prosecution didn't have such a witness, but the prosecution knew that defense counsel was going through with his attempt to prove Appellant's eligibility for probation by reason

of the fact that defense counsel allowed Appellant to be interviewed that morning by Jones, the probation officer, and because of this, the prosecution knew that the defense was going to call family members to prove Appellant's eligibility for probation who could also be impeached about the sexual assault of the babysitter.

In the unlikely event that the prosecution was able to produce a witness qualified to testify about the sexual assault of the babysitter, then defense counsel could have called the family members, Potter and Dorothy Prine, to prove up his eligibility for probation, although Appellant submits it would have been a lost cause.

By allowing Jones to interview Appellant before Jones testified and by calling Jones, Potter and Dorothy Prine as witnesses, trial counsel failed to perform his function, as enunciated in **Strickland v. Washington**, supra at 466 U.S. 690, which was "*...to make the adversarial testing process work...*" in Appellant's case. Just as defense counsel in **Andrews v. State**, supra at p. 102, failed to make the adversarial testing process work by not objecting to the State's misstatement of the law of cumulation of sentences in his case, trial counsel in Appellant's case did the same by giving the State the ability to turn Jones into an effective State's witness and effectively did the State's job, rather than being an adversary, in presenting witnesses to testify about Appellant's sexual assault of the babysitter, rather than resting his case without calling witnesses and forcing the State to call one or more witnesses to testify about the babysitter offense, if the State had any such witnesses, and if so, then testing their qualifications to testify about that offense before they testified in front of the jury.

In the State's Brief, at pp. 11-16, the State details the testimony of the defense punishment witnesses in support of its argument that defense counsel's performance was not deficient. Appellant will only address relevant assertions made in that part of its argument. Regarding the probation officer, Jones, the State makes the ludicrous assertion that Jones' opinion that Appellant did not deserve probation had limited weight, and was outweighed by the benefit of his other testimony, because of the brief interview with Appellant. The evidence reflected that Jones had ten years experience with the probation department, with close to three years as supervisor of the sex offender caseload, the State's cross-examination emphasized that probationers are only punished if they are caught breaking the rules, and there was no evidence showing any animus towards Appellant on Jones' part (R.R.6 – 15-20, 24). There should be no question that Jones' testimony, and especially his opinion on Appellant's suitability for probation, from a juror's perspective, would have been that of an experienced, detached professional that would have carried a great amount of weight with the average juror.

Before turning to the State's discussion regarding Potter and Dorothy Prine, the State makes another incorrect assertion in its brief, at page 13, note 2. The State addresses the question, based on the facts of this case, in which Jones testified that he believed Appellant was not a suitable candidate for probation and implies that Appellant, in his brief before the Court of Appeals, argued that the question assumed facts not in evidence. Actually, at the Court of Appeals, Appellant argued that one of the reasons trial counsel was deficient dealt with trial counsel's objection to the prosecution's attempt to obtain Jones' opinion based on the sexual assault of the babysitter when Appellant was younger.

Appellant argued that the proper objection to that question was that it assumed facts not in evidence because at that point there was no evidence in the record about the babysitter, which was not urged by trial counsel, while trial counsel made other objections that did not apply (See Appellant's COA Brief, at pp. 32-34).

Turning to the State's discussion of the testimony by Potter and Dorothy Prine, the State argues that their positive testimony on Appellant's behalf was meaningful to the jury. There are two reasons this argument is without merit. First, they are Appellant's family members, called to the stand by Appellant's trial counsel, jurors are going to expect them to say good things, not bad or neutral things, about Appellant, and jurors are going to have a jaded view towards their testimony from the beginning. Second, both women testified that Appellant had never committed any crimes, that rape was out of character for Appellant and something that he would not condone, and then they are both shown to be liars, delusional, or both, when they are both shown to have known that he raped the babysitter years before (R.R.6 – 28-29, 35, 47, 52-54). Their credibility, at least the part that was favorable to Appellant, was destroyed by these facts.

Regarding the State's argument that the prejudicial impact of the babysitter evidence was diminished by time, it appears that the trial prosecutor disagreed because the trial prosecutor referred to this evidence in five out of the eight and a half pages of the State's closing argument (R.R.6 – 78-82). Further, **if** the babysitter offense had not been prosecuted until twenty years or so after the fact, **if** the evidence showed Appellant had lived an exemplary life during that time and was in good standing in the community with no other offenses on his record, the State might have a point. However, that's not the case. Thanks to

trial counsel, Appellant was shown to be a repeat sex offender, with the first offense being committed when he was married and he was never even punished for having committed that crime. A repeat sex offender, especially one who got away with the first crime, is almost as bad as a serial killer. It's the type of criminal that the vast majority of the population would rather see in prison for life, or dead, and opening the door to this type of evidence is something that any reasonably competent defense attorney would avoid like the plague.

In conclusion, prior to trial counsel opening the door to all of this damaging punishment evidence, the jury had convicted Appellant for a sexual assault during which both Appellant and the victim were seriously intoxicated, with the victim not even knowing who had assaulted her, and the prosecution had presented absolutely no evidence of any prior bad acts on Appellant's part (R.R.4 – 34-37, 40-42; R.R.6 – 24). The range of punishment that the jury had to consider was fairly wide, from two years to twenty years confinement and a possible fine of up to \$10,000.00. See **Texas Penal Code, Sections 12.33 and 22.011 (f)**. Appellant submits that had trial counsel pursued the only reasonable strategy as detailed in this brief and rested on punishment without calling any witnesses, the jury, most likely, would not have heard any evidence indicating that Appellant was a repeat sex offender who had avoided punishment for the first crime, and that his punishment would have been significantly less than the maximum prison sentence, and almost maximum fine, that he received. Trial counsel's handling of the punishment phase of trial, as detailed in this brief, was totally unreasonable and unprofessional, did not involve any reasonable strategy, totally prejudiced Appellant and caused Appellant to receive the maximum prison sentence.

CONCLUSION AND PRAYER

WHEREFORE, Premises Considered, Appellant respectfully prays that this Honorable Court of Criminal Appeals affirm the decision of the court of appeals and remand this case to the trial court for a new punishment hearing.

Respectfully Submitted,

/s/ Steven Greene

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CERTIFICATE OF SERVICE

I, STEVEN GREENE, do hereby certify that a true and correct copy of the foregoing Brief for Appellant was delivered by email and Eserve on January 9, 2017, to the following:

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I, STEVEN GREENE, do hereby certify that there are 5,348 words contained in this document.

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